

**S Rajendran vs State of Kerala**

**S Rajendran vs State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1352691](https://sooperkanoon.com/1352691)

**Court :** Kerala

**Decided On :** Jun-13-2023

**Judge :** Honourable Dr. Justice Kauser Edappagath

**Appeal No. :** Crl.Rev.Pet/444/2023

**Appellant :** S Rajendran

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945  
CRL.REV.PET NO. 438 OF 2023

**ORDER IN CMP 86/16 IN CC 1029/2012 OF JUDICIAL  
MAGISTRATE**

OF FIRST CLASS -III, NEYYATTINKARA REVISION PETITIONER/1ST  
ACCUSED: S RAJENDRAN, S/O SADASIVAN, [SECRETARY OF  
BALARAMAPURAM WEST HANDLOOM WEAVERS' COOPERATIVE- SOCIETY  
NO. H IND (T) 327] NAINA HOUSE, THALAYIL DESOM, ATHIYANNOOR  
VILLAGE, BALARAMAPURAM, NEYYATTINKARA TALUK, PIN - 695501 BY

RESPONDENTS/COMPLAINANTS/STATE:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, HIGH COURT CAMPUS, ERNAKULAM, PIN - 682031 2 THE SUPERINTENDENT OF POLICE VIGILANCE AND ANTI- CORRUPTION BUREAU, SPECIAL CELL, THIRUVANANTHAPURAM, IN CRIME NO. 7/ 1998/SCT OF VIGILANCE CELL, THIRUVANANTHAPURAM, PIN - SMT S REKHA SR PP, SRI A RAJESH SPL PP VACB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13.06.2023, ALONG WITH CrI.Rev.Pet.444/2023, AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945 CRL.REV.PET NO. 444 OF 2023

### **ORDER IN CMP 83/2016 IN CC 1028/2012 OF JUDICIAL**

MAGISTRATE OF FIRST CLASS -III, NEYYATTINKARA REVISION PETITIONER/1ST ACCUSED: S RAJENDRAN, S/O SADASIVAN, [SECRETARY OF BALARAMAPURAM WEST HANDLOOM WEAVERS' COOPERATIVE-SOCIETY NO. H IND (T) 327] NAINA HOUSE, THALAYIL DESOM, ATHIYANNOOR VILLAGE, BALARAMAPURAM, NEYYATTINKARA TALUK, PIN CODE: - 695 501. BY ADVS.ARUN CHANDRAN D.SOMASUNDARAM RESPONDENTS/COMPLAINANTS/STATE:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 THE SUPERINTENDENT OF POLICE VIGILANCE AND ANTI-

CORRUPTION BUREAU, SPECIAL CELL, THIRUVANANTHAPURAM,  
IN CRIME NO. 7/ 1998/SCT OF VIGILANCE CELL,  
THIRUVANANTHAPURAM, PIN CODE: - 695 033. SMT S REKHA SR  
PP, SRI A RAJESH SPL PP VACB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
13.06.2023, ALONG WITH CrI.Rev.Pet.438/2023 AND CONNECTED CASES,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945  
CRL.REV.PET NO. 446 OF 2023

**ORDER IN CMP 55/2016 IN CC 1026/2012 OF JUDICIAL  
MAGISTRATE**

OF FIRST CLASS -III, NEYYATTINKARA REVISION PETITIONER/1ST  
ACCUSED: S RAJENDRAN, S/O SADASIVAN, [SECRETARY OF  
BALARAMAPURAM WEST HANDLOOM WEAVERS' COOPERATIVE- SOCIETY  
NO. H IND (T) 327] NAINA HOUSE, THALAYIL DESOM, ATHIYANNOOR  
VILLAGE, BALARAMAPURAM, NEYYATTINKARA TALUK, PIN - 695501 BY  
ADVS.ARUN CHANDRAN D.SOMASUNDARAM  
RESPONDENTS/COMPLAINANTS/STATE:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, HIGH COURT CAMPUS,  
ERNAKULAM, PIN - 682031 2 THE SUPERINTENDENT OF POLICE,  
VIGILANCE AND ANTI- CORRUPTION BUREAU, SPECIAL CELL,  
THIRUVANANTHAPURAM, IN CRIME NO. 7/ 1998/SCT OF VIGILANCE  
CELL, THIRUVANANTHAPURAM, PIN - 695033 SMT S REKHA SR PP,  
SRI A RAJESH SPL PP VACB. THIS CRIMINAL REVISION PETITION  
HAVING COME UP FOR

ADMISSION ON 13.06.2023, ALONG WITH Crl.Rev.Pet.438/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:4:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945  
CRL.REV.PET NO. 447 OF 2023

**ORDER IN CMP 79/2016 IN CC 1030/2012 OF JUDICIAL  
MAGISTRATE**

OF FIRST CLASS -III, NEYYATTINKARA REVISION PETITIONER/1ST  
ACCUSED: S RAJENDRAN, S/O SADASIVAN, [SECRETARY OF  
BALARAMAPURAM WEST HANDLOOM WEAVERS' COOPERATIVE- SOCIETY  
NO. H IND (T) 327] NAINA HOUSE, THALAYIL DESOM, ATHIYANNOOR  
VILLAGE, BALARAMAPURAM, NEYYATTINKARA TALUK - 695 501. BY  
ADVS.ARUN CHANDRAN D.SOMASUNDARAM  
RESPONDENTS/COMPLAINANTS/STATE: 1 STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN -  
682031 2 THE SUPERINTENDENT OF POLICE VIGILANCE AND ANTI-  
CORRUPTION BUREAU, SPECIAL CELL, THIRUVANANTHAPURAM, IN CRIME  
NO. 7/ 1998/SCT OF VIGILANCE CELL, THIRUVANANTHAPURAM.- 695033  
SMT S REKHA SR PP, SRI A RAJESH SPL PP VACB. THIS CRIMINAL  
REVISION PETITION HAVING COME UP FOR ADMISSION ON 13.06.2023,  
ALONG WITH Crl.Rev.Pet.438/2023 AND CONNECTED CASES, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING: -:5:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945  
CRL.REV.PET NO. 456 OF 2023

# **ORDER IN CMP 54/2016 IN CC 1027/2012 OF JUDICIAL MAGISTRATE**

OF FIRST CLASS -III, NEYYATTINKARA REVISION PETITIONER/1ST ACCUSED: S RAJENDRAN, AGED 51 YEARS, S/O SADASIVAN, [SECRETARY OF BALARAMAPURAM WEST HANDLOOM WEAVERS' COOPERATIVE-SOCIETY NO. H IND (T) 327] NAINA HOUSE, THALAYIL DESOM, ATHIYANNOOR VILLAGE, BALARAMAPURAM, NEYYATTINKARA TALUK 695501 BY ADVS.ARUN CHANDRAN D.SOMASUNDARAM RESPONDENTS/COMPLAINANTS/STATE:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, HIGH COURT CAMPUS, ERNAKULAM, PIN - 682031 2 THE SUPERINTENDENT OF POLICE VIGILANCE AND ANTI- CORRUPTION BUREAU, SPECIAL CELL, THIRUVANANTHAPURAM, IN CRIME NO. 7/ 1998/SCT OF VIGILANCE CELL, THIRUVANANTHAPURAM, PIN - SMT S REKHA SR PP, SRI A RAJESH SPL PP VACB. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR

ADMISSION ON 13.06.2023, ALONG WITH CrI.Rev.Pet.438/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:6:-

## **ORDER**

Dated this the 13th day of June, 2023 All these criminal revision petitions have been filed challenging the dismissal orders of discharge passed by the Judicial First Class Magistrate Court-III, Neyyattinkara (for short 'the court below').

2. The petitioner herein is the accused No.1 in five different cases (C.C.Nos. 1029/2012, 1028/2012, 1026/2012,

allegations in all the cases are identical. The offences alleged against him in all the cases are punishable under Sections 468, 471, 403, 420, 120B r/w 34 & 511 of

403 of IPC.

3. The revision petitioner was the Secretary and the

accused No.2 was the President of the Balaramapuram West Handloom Weavers' Co-operative Society, a Society registered under the Co-operative Societies Act. The accused No.3 was the Co-operative Inspector. The crime was registered on the basis of a complaint given at the Lok Ayukta by one Viswambharan, who was the former Assistant Registrar of Co-operative Societies.

-:7:-

After investigation, final report was filed in all the cases. The prosecution allegation in all the cases as revealed from the final reports is that the revision petitioner and the accused No.2 being public servants, with the intention of obtaining undue pecuniary advantage conspired with the accused No.3 and in furtherance of their criminal conspiracy, abused their official position as public

servants and committed forgery for the purpose of cheating. The petitioner along with the remaining accused were alleged to have fabricated documents such as Day Book, Invoice Register, Yarn Stock Register etc. in order to show huge production of clothes, sale of clothes at reduced rate during rebate season and fraudulently applied to obtain rebate claim for the years 1988 and 1995.

4. The revision petitioner appeared at the court below in

all the cases. He was released on bail. He filed an application for discharge on the ground that there was no sufficient ground for proceeding against him. The court below upon consideration of the records of the case and after hearing the submissions of the revision petitioner as well as the prosecution dismissed the - :8:- applications vide the impugned orders. Challenging those orders, the above revision petitions have been preferred.

5. I have heard Smt. Anjali, the learned counsel for the petitioner and Smt. S. Rekha, the learned Senior Public Prosecutor.

6. The learned counsel for the revision petitioner submitted that the statement of the witnesses and the materials on record would reveal that there was no sufficient ground to

proceed against the revision petitioner. The counsel further submitted that the prosecution is bad for want of sanction under Section 197 of Cr.P.C. The court below ought to have discharged the revision petitioner, submitted the learned counsel. On the other hand, the learned Senior Public Prosecutor submitted that there are materials on record to prima facie show the involvement of the revision petitioner in the crime. The court below has rightly dismissed the discharge application, submitted the learned Public Prosecutor. The learned public prosecutor further submitted that, sanction under Section 197 of Cr.P.C is not required in any of the cases. -:9:-

7. It is settled that, at the stage of consideration of the

application for discharge, the court is required to consider whether there are sufficient grounds to proceed against the accused. The court is not to examine and assess in detail the materials on record produced by the prosecution, nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At this stage, the court is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.

8. The first contention raised by the learned counsel for the revision petitioner is regarding sanction. Section 197(1) of Cr.P.C reads as follows: 197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or

Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such

offence except with the previous :-10:- sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

9. Section 197(1) is attracted only in a case where a

public servant is removable from his office by or with the sanction of the Government concerned, by Central or State as the case may be. The status of the revision petitioner is that of a

Secretary of the Co-operative Society. Section 28(1) of the Kerala Co-operative Societies Act ('Societies Act' for short) says that the general body of a Society shall constitute a committee for a period of 5 years in accordance with the bye-laws and entrust the management of the affairs of the Society to such committee. Section 28AB deals with the election and removal of

President, Vice President etc. of the Society. It says that the committee constituted under sub-Section (1) of Section 28 shall elect from themselves a President, a Vice President, a Treasurer :-11:- or any other Officer by whatever name he is designated in the manner as may be prescribed. Sub-section (2) says that the committee shall remove from the office the President, the Vice President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of members of such

committee in accordance with the procedure as may be prescribed. Thus, the revision petitioner being the elected Secretary is removable by the committee constituted under Section 28 AB(2) of the Societies Act. In other words, the petitioner is not removable from his office by the Government. Hence, Section 197 of Cr.P.C. is not necessary. (See

Navaikulam Cashew Workers Industrial Co-operative Society Ltd. & Others v. Enforcement Officer, Regional Provident Fund Commissioner and Another [2009 (3) KHC 970])

10. That apart, in order to attract Section 197 of Cr.P.C., the public servant must commit offence while he was discharging his official duty. In other words, the act must fall within the -:12:- scope and range of official duties of the public servant concerned. The act concerned must have direct connection with his official

duties. Going by the allegations in the final report, the act allegedly committed by the revision petitioner would not come within the ambit of discharging his official duty. On that ground also, the sanction under Section 197 of Cr.P.C. is not required. The materials on record show that there are sufficient materials to prima facie connect the petitioner with the offences

alleged. As stated already, at the stage of consideration of application for discharge, the court is not to examine and assess in detail the materials on record produced by the prosecution. Nor is it for the court to consider the sufficiency of materials to establish the offences alleged against the accused persons. I find no illegality or impropriety in the impugned orders. Accordingly, all the criminal revision petitions stand dismissed.

Sd/- DR. KAUSER EDAPPAGATH JUDGE kp

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